Supreme Court, U.S.
FILED

93-1267 DEC 28 1993

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IN THE
SUPREME COURT OF THE UNITED STATES
DECEMBER TERM, 1993

MICHAEL B. KING,

Petitioner,

v.

BOARD OF REGENTS OF THE
UNIVERSITY OF GEORGIA, et. al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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37 pp

QUESTION PRESENTED

What is the test for determining "good cause" under Federal Rule of Civil Procedure 26(c)?

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JURISDICTION

Jurisdiction is invoked pursuant to Section 1254(1) of Title 28 of the United States Code. Judgment was entered on August 18, 1993, and the petition for a rehearing was denied on September 29, 1993.

FEDERAL RULE OF CIVIL PROCEDURE

Rule 26(c) provides:

"Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

STATEMENT OF THE CASE

On July 26, 1991, the petitioner filed his complaint pursuant to 42 U.S.C. §§ 1981, 1983 and 1988, alleging that the respondents had arbitrarily and discriminatorily denied him admission to Georgia State University College of Law.

During the time allowed for discovery of information, the petitioner served respondents Marjorie Knowles and Raytheon M. Rawls with notice of their depositions. The respondents failed to appear for their depositions. The petitioner requested the respondents to give him several dates when they could be available for their depositions. The respondents provided the petitioner with one date, but the petitioner was scheduled to appear in court for a trial on that date.

When the petitioner was unable to depose the respondents on the date provided by them, they move for a protective order, barring the taking of their depositions. The

district court granted the respondents' motion, and the appeals court affirmed the decision of the district court.

ARGUMENT

This Court has not addressed the issue of what constitutes "good cause" for protecting a party against the taking of his deposition, nor has this court suggested a test to use in determining the existence of "good cause." These matters have been left to the discretion of the lower courts.

The majority of the circuits hold that there is "good cause" to bar the taking of a deposition only when "extraordinary circumstances" exists in a particular case. Salter v. Upjohn Co., 593 F. 2d. 649 (5th Cir. 1979); Marrese v. American Academy of Orthopaedic Surgeons, 726 F. 2d. 1150 (7th Cir. 1984). These circuits apply a "balancing test" to determine whether the needs of the party seeking the deposition outweigh any harm the other party may suffer. Id.

Failure of the trial court to balance the interests of the parties is an abuse of its discretion in these circuits. Id.

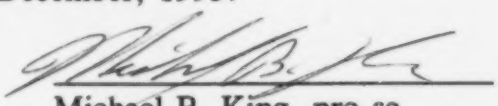
The Eleventh Circuit, however, does not apply a standard for determining whether "good cause" exists in a particular case. The Eleventh Circuit will bar the taking of a deposition on a showing of "mere inconvenience" without considering the interests of the party seeking the deposition. Such judicial conduct deprives that party of a fair opportunity to develop and prepare his case, and said party will probably lose his action at the summary judgment stage of the proceedings.

Since the judicial conduct of the Eleventh Circuit deviates so far from that of other circuits, a review of its decision by this Court is warranted to correct such conduct, and to protect the rights of parties seeking to discover information by deposition.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

This 28th day of December, 1993.



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CERTIFICATE OF SERVICE

I certify that I have this day served the within and foregoing Petition for Writ of Certiorari, by first class mail, upon:

Dennis Dunn
Attorney for Respondents
132 State Judicial Bldg.
Atlanta, GA 30334

This 31st day of January, 1994.

Michael B. King